STATE OF WASHINGTON

DEPARTMENT OF REVENUE

December 31, 2008

TO: Interested Parties

FROM: Brad Flaherty, Assistant Director
Property Tax Division

SUBJECT: **EMERGENCY RULE CLARIFYING DEFINITIONS RELATING TO CLASSIFICATION OF "FARM AND AGRICULTURAL LAND"**

Introduction

The attached emergency rule is issued to address two situations arising under the "farm and agricultural land" classification of the Current Use Program:

(1) The exclusion of land used for raising calves or piglets that are purchased rather than bred onsite; and
(2) The inconsistent classification of horse boarding operations among counties.

Summary of Changes

The Department has amended WAC 458-30-200 on an emergency basis to clarify that:

(1) It is not necessary to breed animals to qualify for the "farm and agricultural land" classification; and
(2) The sale of forage through the grazing of livestock, including equines, constitutes the sale of an agricultural product.

Background

During the past year, the Department became aware of situations where land used only to raise calves or piglets, without breeding the animals, was denied "current use" valuation under the "farm and agricultural land" classification. Also, more recently, it became apparent that some counties have allowed land used for horse boarding to be classified as "farm and agricultural land" while other counties have not.

As a result of these actions, on November 14, 2008, the Department asked assessors and treasurers to delay the involuntary removal of property from the "farm and agricultural land" classification. At the same time, the Department reexamined the statute and the definitions in the rule dealing with current use land classification. The definitions in the Department's current rule have been in place since 1971 with very little change. Since that time, the Department has consistently required that animals be fed, bred, managed, and sold in order for land to be used for a "commercial agricultural purpose." Commercial agricultural practices, however, have changed over the intervening 37 years, and it appears that the Department's interpretation may now be overly restrictive.

Current Law

The statute (RCW 84.34.020(2)) defines "farm and agricultural land" as any parcel of land (20 or more acres) that is "devoted primarily to the production of livestock or agricultural commodities for commercial purposes," and any land (less than 20 acres) "devoted primarily to agricultural uses," with specified gross income requirements. After a thorough review of the amendments to the statute since 1970, other related laws in Washington, relevant case law in Washington and throughout the country, and the many comments and suggestions received from stakeholders, the Department has concluded that the current statute, at a minimum, requires that property be used for *the production of an agricultural product for sale* in order to qualify for the "farm and agricultural land" classification.

Emergency Rule

The Department has, therefore, amended its rule (WAC 458-30-200) on an emergency basis to broaden the scope of the rule by: (1) eliminating the requirement for breeding of animals; and (2) allowing the "sale" of forage through the grazing of livestock, including equines.

Under the emergency rule, raising pigs, calves, or other livestock for the production of food or fiber, without breeding them does not disqualify the land from classification. In addition, if a horse boarding operation pastures or grazes the boarded horses, then the "sale" of the pasture forage constitutes the sale of an agricultural product.

Because the statute requires that agricultural land be used to produce an agricultural product for sale, the emergency rule cannot expand the definition of "commercial agricultural purposes" to allow land which is used only for recreation, including the recreational use of horses or other animals, to qualify for the farm and agricultural land classification. Land used for stabling, training, riding lessons, showing horses, racing horses, the therapeutic use of horses or other activities involving the use of animals, <u>is only eligible for the farm and agricultural classification if the activity includes commercial pasturing or grazing.</u>

Even if recreational activities, such as those described above, do not qualify land for classification as farm and agricultural land under the current statute, the land would likely remain qualified for the Current Use Program and a reduced valuation under the open space classification, or the open space subclassification as farm and agricultural conservation land. In many counties, the valuation of properties classified as open space or farm and agricultural conservation land is similar to valuation of property in farm and agricultural land classification. Additionally 16 counties have adopted a Public Benefit Rating System (PBRS) that enables the legislative authority in each of those counties to adjust the property tax benefit for properties in these classifications to meet their own needs.

Next Steps

The emergency rule is effective for 120 days, but can be renewed until a permanent rule is adopted. The Department intends to begin the permanent rule-making process as soon as possible in 2009. In that process, all interested persons have the opportunity to comment on the

proposed permanent rule or suggest changes, either orally at the meeting or hearing, or in writing. There will be an initial public meeting and then a public hearing, probably two to four months after the initial meeting. All persons who have indicated their interest in the rule-making process will be notified of the meeting and hearing dates. When the final draft of the permanent rule is ready, it will be filed with the Code Reviser and be effective 30 days after filing.

Although the Department believes that it does not have authority to further broaden the rule under current law, the Department is available to assist in addressing any continuing concerns, including providing drafts of desired legislation. The Department has reviewed legislation in other states that has dealt with many of the same concerns currently being raised in Washington. One example is an Oregon statute that specifically provides that, "[s]tabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows," is a "farm use."

Additionally, stakeholders have raised several other issues that are beyond the administrative authority of the Department. These include:

- Exempting the additional tax upon removal when the property was allowed into the program by the assessor and the use has not changed;
- Preventing the imposition of penalties and interest upon removal from the program; and
- Relaxing common ownership requirements for contiguous properties.

These issues are also outside the Department's rulemaking authority under the current statute. If changes in these areas are sought, legislative changes are required.

BF:slc
Attachments